

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

STATE OF TEXAS, ET AL )  
)  
)  
)  
VS. ) CIVIL ACTION NO.  
) B-14-CV-254  
)  
)  
UNITED STATES OF AMERICA, )  
ET AL )

MOTION HEARING  
BEFORE THE HONORABLE ANDREW S. HANEN  
JUNE 7, 2016

A P P E A R A N C E S

FOR THE STATE OF TEXAS:

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10:06:07 1 THE COURT: All right. We're here today in  
10:06:11 2 B-14-254; Texas, et al. versus the U.S., et al.

10:06:17 3 Who's going to speak for Texas?

10:06:20 4 Ms. Colmenero, I bet it's you since you're  
10:06:23 5 the only one at the table.

10:06:24 6 MS. COLMENERO: Yes, Your Honor, I'm here  
10:06:25 7 from the Texas Attorney General's office on behalf of  
10:06:27 8 the Plaintiffs.

10:06:27 9 THE COURT: All right. And who's going to  
10:06:29 10 speak on behalf of the United States?

10:06:31 11 MR. GILLIGAN: James Gilligan, Your Honor,  
10:06:34 12 with the Department of Justice.

10:06:36 13 THE COURT: All right.

10:06:37 14 And then, Ms. Perales, I assume you're  
10:06:40 15 speaking for the Intervenors?

10:06:41 16 MS. PERALES: Good morning, Your Honor.  
10:06:42 17 Yes.

10:06:43 18 THE COURT: Okay. Do we have anybody else  
10:06:46 19 here that's representing anyone?

10:06:51 20 Okay. All right. Mr. Gilligan, why don't I  
10:06:53 21 start with you. It's your motion.

10:06:55 22 Although, the -- Ms. Perales has joined in  
10:06:57 23 it, her clients have joined in it, so --

10:07:01 24 MR. GILLIGAN: Yes, Your Honor. Thank you.

10:07:03 25 One of the first items I'd like to address,

10:07:09 1 with the Court's permission, is that of a specific  
10:07:13 2 portion of the court's May 19 public order that we  
10:07:17 3 have -- as to which we have sought a stay, and that's  
10:07:20 4 the June 10th deadline for the production by DHS of  
10:07:23 5 personally identifying information of the three-year  
10:07:28 6 DACA recipients.

10:07:29 7 I -- I do not know if the Court has had an  
10:07:32 8 opportunity to review the Defendant's Amended Meet and  
10:07:36 9 Confer Statement regarding our most recent discussions  
10:07:39 10 with the Plaintiff States about that deadline.

10:07:42 11 THE COURT: And that was at -- it's alright  
10:07:45 12 with the States if you postpone that until after the  
10:07:47 13 production -- or after the Supreme Court rules?

10:07:50 14 MR. GILLIGAN: Yes, until 30 days after the  
10:07:52 15 Supreme Court's ruling. And -- and so --

10:07:53 16 THE COURT: That's fine. You don't have to  
10:07:55 17 worry about that June 10th date.

10:07:57 18 MR. GILLIGAN: Okay. Thank you very much,  
10:07:58 19 Your Honor. We appreciate the court's willingness and  
10:08:00 20 the Plaintiff's willingness to have that deadline  
10:08:02 21 extended because, as the record in recent actions in  
10:08:05 22 the -- in the case go to show, that production of such a  
10:08:08 23 large quantity of sensitive, personal information  
10:08:11 24 concerning so many individuals --

10:08:11 25 THE COURT: Well, let -- let me -- let me --

10:08:13 1 MR. GILLIGAN: -- was a matter of grave  
10:08:14 2 concern.

10:08:15 3 THE COURT: -- let me interrupt you there on  
10:08:16 4 this topic, though.

10:08:20 5 You were here at the last hearing we had, I  
10:08:22 6 think.

10:08:23 7 MR. GILLIGAN: August 19th of last year.

10:08:23 8 THE COURT: Right.

10:08:24 9 MR. GILLIGAN: Correct, Your Honor.

10:08:25 10 THE COURT: And I asked you a question that  
10:08:27 11 basically said, this material exists with regard to the  
10:08:35 12 108,000, the names and addresses, on some computers  
10:08:38 13 somewhere.

10:08:40 14 And you stopped and went and conferred with  
10:08:42 15 your table and came back and said, you're right,  
10:08:44 16 Your Honor, we have that, but -- you know.

10:08:48 17 My order, why it was written broadly,  
10:08:51 18 because I didn't want, you know, people to slice and  
10:08:57 19 dice it, I mean, it was intended only to cover, you  
10:09:01 20 know, name, address.

10:09:06 21 And I -- I thought, given your statement to  
10:09:10 22 me earlier, that it was something that you could  
10:09:12 23 basically punch a button on a computer and spit it out.

10:09:16 24 So that was, just so you know, that was my  
10:09:19 25 thinking.

10:09:19 1 MR. GILLIGAN: I -- I -- I --

10:09:20 2 THE COURT: It's kind of moot at the moment  
10:09:22 3 because I'm -- I'm going to go with the parties'  
10:09:23 4 agreement.

10:09:24 5 MR. GILLIGAN: And -- and -- and I  
10:09:25 6 understand Your Honor's point. And -- and I -- I went  
10:09:27 7 back, in preparation for this hearing, and -- and looked  
10:09:29 8 at the transcript of the August 19th hearing.

10:09:32 9 And -- and my recollection, as I stand here  
10:09:34 10 at the moment, may not be perfect, but, as I recall the  
10:09:37 11 exchange, Your Honor, it concerned whether we had a list  
10:09:40 12 of the 108,000 individuals who received three-year terms  
10:09:45 13 of deferred action prior to the court's injunction.  
10:09:48 14 And -- and my agency counsel from DHS confirmed that we  
10:09:52 15 had -- we had that list.

10:09:53 16 But pulling all of the PII and contact  
10:09:56 17 information and location information from the Claims 3  
10:10:01 18 database, it was a separate understanding.

10:10:03 19 THE COURT: No, my point, though,  
10:10:04 20 Mr. Gilligan, that's why I interrupted you, was that --  
10:10:07 21 that, if that list, basically, is listed, here's the  
10:10:12 22 name, here's the address, that, in and of itself, would  
10:10:17 23 comply with what I want is what I'm telling you.

10:10:19 24 MR. GILLIGAN: Right, we --

10:10:20 25 THE COURT: I don't need every document you

10:10:22 1 have, you know. My -- my order, as I said, was written  
10:10:26 2 broad because I didn't want people to, you know, parse  
10:10:31 3 it out. But I don't want you to think that, assuming  
10:10:38 4 you were -- I was going to hold you to the June 10th  
10:10:40 5 deadline, which I've just told you I'm not, that you  
10:10:45 6 have to give me every document that DHS has, because I  
10:10:49 7 don't -- I'm not interested in that.

10:10:50 8 MR. GILLIGAN: Well, I -- I appreciate that  
10:10:52 9 clarification, Your Honor, because that was the second  
10:10:54 10 item on my list of things to do this morning.

10:10:56 11 THE COURT: Oh, I can finally shorten your  
10:10:58 12 list.

10:10:58 13 MR. GILLIGAN: Thank you, Your Honor. Yes,  
10:11:00 14 as -- as stated in our papers, we believe that the  
10:11:03 15 appropriate response to the court's order, at least in  
10:11:05 16 the first instance, is to attain -- obtain the available  
10:11:08 17 information from the Claims 3 database rather than going  
10:11:11 18 to ancillary and largely duplicative databases and paper  
10:11:15 19 A-files and things likes that, so -- and we  
10:11:17 20 appreciate --

10:11:17 21 THE COURT: I just didn't know what you  
10:11:18 22 called it.

10:11:19 23 MR. GILLIGAN: Right.

10:11:20 24 THE COURT: And so that's the way -- why it  
10:11:21 25 was written the way it was.

10:11:23 1 MR. GILLIGAN: Right. That's -- that's --  
10:11:24 2 that's very helpful, Your Honor, to know that we can --  
10:11:26 3 can limit our efforts for now to the Claims 3 database.

10:11:30 4 Then, turning to our motion for a stay,  
10:11:34 5 Your Honor, the -- the reasons that we believe the stay  
10:11:39 6 should be granted are set forth in our papers. And --  
10:11:43 7 and -- and I don't wish to belabor them unnecessarily  
10:11:45 8 here this morning.

10:11:47 9 In a nutshell, we believe we're likely to  
10:11:50 10 prevail on the merits --

10:11:52 11 THE COURT: Okay. Help me on that.

10:11:53 12 MR. GILLIGAN: Okay.

10:11:54 13 THE COURT: How?

10:11:55 14 MR. GILLIGAN: On the merits of the court's  
10:11:58 15 public May 19th order?

10:11:59 16 There are -- there are three grounds in  
10:12:01 17 which we believe we're going to prevail on -- on the  
10:12:02 18 merits, Your Honor.

10:12:02 19 First, it's the nature of the sanctions. We  
10:12:04 20 submit, as stated in our papers, that they exceed the  
10:12:06 21 inherent limits on a court's inherent sanctions power.

10:12:11 22 THE COURT: Okay. Let me -- let's start  
10:12:11 23 with some building blocks there.

10:12:13 24 Is it the DOJ's position that a federal  
10:12:16 25 court, not me, any federal court, cannot sanction a

10:12:21 1 lawyer that doesn't tell that court the truth?

10:12:23 2 MR. GILLIGAN: No, that is not our position,  
10:12:25 3 Your Honor.

10:12:25 4 THE COURT: All right. And let's -- let's  
10:12:30 5 assume, hypothetically, that that Judge says, okay, to  
10:12:35 6 the hypothetical lawyer, I'm going to order you, I'm --  
10:12:39 7 I'm not going to try to disbar him, I'm not going to try  
10:12:42 8 to do anything like that, go take some CLE classes on  
10:12:46 9 ethics. Can a federal Judge do that?

10:12:49 10 MR. GILLIGAN: I -- I --

10:12:50 11 THE COURT: One lawyer who's -- who's not  
10:12:54 12 told the truth in his court?

10:12:56 13 MR. GILLIGAN: It's hard to address matters  
10:12:58 14 like that in the abstract, Your Honor, but I would not  
10:13:00 15 say that that -- that is something that is beyond the  
10:13:03 16 limits under appropriate circumstances of a court's  
10:13:05 17 inherent power. One -- one lawyer, as the Court says.

10:13:07 18 THE COURT: Okay. All right. Go ahead,  
10:13:09 19 then.

10:13:09 20 MR. GILLIGAN: Well, but the -- the --  
10:13:11 21 the -- the -- the issue before us concerns a requirement  
10:13:14 22 that the Attorney General implement a prescribed program  
10:13:17 23 of continuing legal ethics education for a five year  
10:13:21 24 period, for not one, but for three thousand lawyers, the  
10:13:24 25 vast majority of whom will never appear in this



10:13:27 1 courtroom. We believe that transcends the limits of the  
10:13:31 2 court's inherent power to control the proceedings and  
10:13:34 3 the parties appearing before it.

10:13:36 4 It -- it -- it --

10:13:36 5 THE COURT: Okay. Let's -- let's divide  
10:13:38 6 that up. The first part, I -- I assume, is you're  
10:13:41 7 saying that controlling what the -- how the Attorney  
10:13:46 8 General does something invades the separation of powers?

10:13:49 9 MR. GILLIGAN: That, too, Your Honor, yes.

10:13:52 10 THE COURT: Okay. Well, what's -- what's  
10:13:54 11 the other part then?

10:13:55 12 MR. GILLIGAN: Well, there are -- there are  
10:13:56 13 two parts to it. We think -- we think that it both, as  
10:13:58 14 I say, transcends the inherent limits on a court's  
10:14:02 15 sanctioning power and --

10:14:03 16 THE COURT: What transcends?

10:14:05 17 MR. GILLIGAN: Ordering continuing legal  
10:14:07 18 education for three thousand attorneys, who most -- the  
10:14:11 19 vast majority of whom will never appear before this  
10:14:13 20 court on any proceeding.

10:14:14 21 THE COURT: Okay. Here's my problem with  
10:14:15 22 that. Let me -- let me -- let me stop you there.

10:14:19 23 You -- you just conceded to me that I can  
10:14:22 24 order one.

10:14:24 25 MR. GILLIGAN: One who has appeared before

10:14:26 1 the Court, yes, Your Honor.

10:14:27 2 THE COURT: All right. What do I do with  
10:14:28 3 your pleading, your brief? I didn't make this up. This  
10:14:33 4 is something you filed. In fact, this was after I asked  
10:14:38 5 for a brief on what should be the sanctions, if I found  
10:14:42 6 sanctions, your brief ends by saying, "independent of  
10:14:45 7 any of the above discussion, one important point bears  
10:14:48 8 emphasizing: The Federal Government as a whole is  
10:14:51 9 responsible for the conduct of this litigation. A large  
10:14:54 10 team of attorneys at DOJ and DHS have worked together  
10:14:58 11 through this litigation. So, whatever the results, the  
10:15:00 12 proper subject for the sanctions is the Federal  
10:15:03 13 Government. As a whole should be held responsible, not  
10:15:07 14 an individual person or an attorney."

10:15:09 15 I did what you asked me to do. I did  
10:15:12 16 exactly what you asked me to do.

10:15:15 17 MR. GILLIGAN: Your Honor, I -- I -- I do  
10:15:18 18 not believe that we contemplated when we wrote those  
10:15:21 19 words in that September 4th brief that the -- that the  
10:15:25 20 Court would impose the sanction of the nature that was  
10:15:27 21 set forth in the -- in the May 19th order.

10:15:30 22 THE COURT: I -- I would have ordered  
10:15:31 23 perhaps just the two attorneys that I was -- that had  
10:15:34 24 made the misrepresentations in court. But you filed a  
10:15:37 25 brief saying, don't do it for one, don't do it for two,

10:15:42 1 do it for everybody. So you're saying somehow I did  
10:15:45 2 something improper by doing what you asked me to do?

10:15:48 3 MR. GILLIGAN: Well, Your Honor,  
10:15:49 4 respectfully, I do -- I do not believe that we asked you  
10:15:52 5 to impose or -- or to suggest that the Court could  
10:15:56 6 impose such a sweeping sanction as has been included in  
10:16:01 7 the May 19th order.

10:16:02 8 Even on the -- on the terms that -- that  
10:16:06 9 were set forth in our September 4th brief from last  
10:16:08 10 year, we're not --

10:16:09 11 THE COURT: I mean, actually, I narrowed it  
10:16:10 12 down because I didn't include the -- the DHS lawyers in  
10:16:14 13 it because I -- I didn't see that the DHS had done  
10:16:16 14 anything improper.

10:16:18 15 MR. GILLIGAN: But nor did the vast majority  
10:16:20 16 of those three thousand attorneys who are subject to --

10:16:22 17 THE COURT: I agree with you.

10:16:22 18 MR. GILLIGAN: -- continuing legal  
10:16:22 19 education.

10:16:24 20 THE COURT: I agree with you a hundred  
10:16:25 21 percent. But I did what you asked me to do.

10:16:28 22 MR. GILLIGAN: The -- the -- the other --  
10:16:29 23 another principal that underlies the exertion of the  
10:16:33 24 inherent sanctions power, Your Honor, is it must be  
10:16:36 25 limited to the -- the least sanction needed in order to

10:16:39 1 accomplish the -- the objective, which is, of course, to  
10:16:45 2 deter further conduct of the kind that the Court found  
10:16:49 3 in this case, which is -- which is, although we  
10:16:54 4 respectfully disagree with the finding, a finding of  
10:16:56 5 intentional misrepresentations by a limited group of  
10:17:00 6 attorneys.

10:17:00 7 So, it -- on -- on those terms, we -- we  
10:17:04 8 would argue and have argued that the -- the order far  
10:17:07 9 exceeds what is necessary in order to deter that kind of  
10:17:10 10 misconduct from occurring.

10:17:13 11 THE COURT: Okay. Let me back up. I asked  
10:17:14 12 in the August 19th hearing, and you were here for that,  
10:17:17 13 what y'all would suggest as sanctions. And what I got  
10:17:23 14 was, we shouldn't be sanctioned. Which I understand  
10:17:25 15 that. That -- that's certainly not an unreasonable  
10:17:31 16 position for y'all to take in defense of your position.

10:17:34 17 But then I got to the end of the paragraph  
10:17:36 18 that says, "no matter what you do, you should do it to  
10:17:39 19 everyone."

10:17:42 20 MR. GILLIGAN: Well, I think to hold the  
10:17:46 21 Government accountable, Your Honor, as opposed to  
10:17:51 22 individual attorneys through some sort of penalty, award  
10:17:56 23 of attorneys' fees, or something like that, by proper  
10:18:00 24 notice and procedure --

10:18:01 25 THE COURT: What about attorneys' fees? I

10:18:03 1 was told that if I fine somebody, that the tax payers  
10:18:07 2 would have to pay for it. Is that not true?

10:18:09 3 MR. GILLIGAN: It's -- it's true in many  
10:18:11 4 cases, Your Honor. There are -- there are ins and outs  
10:18:14 5 to that and the authorities in which would have to be --

10:18:16 6 THE COURT: Okay. So that's not true? I --  
10:18:17 7 I was told that. That wasn't true?

10:18:19 8 MR. GILLIGAN: I -- I'm not -- I'm not --  
10:18:21 9 Your Honor, I'm not an expert on this -- on this  
10:18:24 10 subject. It is, in many cases, the case that, yes,  
10:18:26 11 the -- the -- the -- the award of attorneys' fees would  
10:18:30 12 have to be paid from the public or the judgment fund or  
10:18:35 13 from an individual agency's appropriated budget. But  
10:18:38 14 that is a subject, fortunately, with which I've had very  
10:18:43 15 little experience.

10:18:45 16 THE COURT: Okay. Go ahead.

10:18:46 17 MR. GILLIGAN: The other grounds,  
10:18:49 18 Your Honor, on which we believe that the -- we are  
10:18:51 19 substantially likely -- likely to prevail in the Court  
10:18:55 20 of Appeals is that certain procedural protections that  
10:18:56 21 are required before an inherent power sanctions may be  
10:18:58 22 imposed were not followed here. Such as an order to  
10:19:01 23 show cause identifying who the exact targets of the  
10:19:05 24 sanctions were, the nature of the sanctions being  
10:19:08 25 contemplated, followed by an opportunity to submit

10:19:11 1 evidence addressing the -- both the basis in which the  
10:19:16 2 sanctions were to be imposed and the choice of sanction  
10:19:19 3 that the Court is contemplating.

10:19:21 4 THE COURT: All right. Mr. Gilligan, it's  
10:19:23 5 not the Government's position that you don't know who  
10:19:24 6 the two individuals were; are you? I mean, are you  
10:19:27 7 saying that? I set out the conduct on -- in an April  
10:19:30 8 7th order. I quoted the individuals. I mean, is it the  
10:19:36 9 position of the Government that I ought to embarrass  
10:19:38 10 these people by mentioning their names?

10:19:40 11 MR. GILLIGAN: No, it -- it's -- it is  
10:19:45 12 their -- it is their entitlement, Your Honor, it's the  
10:19:47 13 entitlement of any litigant or attorney against whom  
10:19:50 14 sanctions are contemplated to be specifically advised of  
10:19:53 15 that. That could have been done in a -- in a sealed  
10:19:56 16 order to avoid public embarrassment to the attorneys in  
10:20:00 17 question.

10:20:00 18 Certainly --

10:20:01 19 THE COURT: I quoted the conduct. I mean,  
10:20:02 20 you have copies of the transcript. You can't look and  
10:20:04 21 see who said that?

10:20:06 22 MR. GILLIGAN: Yes, Your Honor, but it was  
10:20:08 23 never clear whether the Court was going to issue  
10:20:12 24 personal sanctions or sanctions directed to the  
10:20:14 25 Government, nor of -- nor of what nature. Nor were the

10:20:19 1 parties given an opportunity after such notice to submit  
10:20:22 2 evidence to make a complete record --

10:20:24 3 THE COURT: Woah. Woah. Woah. Woah.  
10:20:26 4 Woah. Woah. Woah. Let's backup. First of all, we've  
10:20:28 5 had hearings on March 9th, March 19th. I gave an order  
10:20:35 6 April 7th. We had an August 19th hearing. I asked for  
10:20:38 7 briefing there. And -- and the hearing I had in June, I  
10:20:43 8 asked for affidavits. I asked for evidence.

10:20:46 9 Ms. Ricketts was -- was doing the argument  
10:20:48 10 at that point in time and I said, do I have any  
10:20:50 11 affidavits? Because you were saying this is just an  
10:20:53 12 innocent mistake. And I was kind of hoping that was  
10:20:55 13 true.

10:20:56 14 And I said, give me some evidence to hang my  
10:20:58 15 hat on. And I said, do I have the affidavits? No. So  
10:21:02 16 I have no proof. I asked for proof and got zero.

10:21:06 17 MR. GILLIGAN: Well, Your -- Your Honor,  
10:21:07 18 what -- what -- as we see the record of this matter, the  
10:21:14 19 Court issued its April 7th order last year indicating  
10:21:17 20 its concern that intentional misrepresentations had been  
10:21:20 21 made.

10:21:21 22 THE COURT: And I described the conduct in  
10:21:22 23 detail.

10:21:23 24 MR. GILLIGAN: And -- and -- and Your Honor  
10:21:25 25 also described in detail the materials that it was

10:21:28 1 ordering us to submit in response to the States motion  
10:21:32 2 for discovery.

10:21:33 3 And we submitted those materials. And we  
10:21:35 4 submitted to the Court, in our April 30th filing, that  
10:21:38 5 those materials alone were sufficient in order to come  
10:21:41 6 to the conclusion that no intentional misrepresentation  
10:21:44 7 had occurred.

10:21:44 8 THE COURT: All right.

10:21:45 9 MR. GILLIGAN: And -- and -- and --

10:21:46 10 THE COURT: Here's my discussion. And I'm  
10:21:48 11 reading this from the June 25th hearing. Ms. Ricketts  
10:21:50 12 is arguing saying: "This should lay to rest the  
10:21:53 13 concerns that anyone has from the Government's side that  
10:21:55 14 we were trying to mislead anyone. Certainly not the  
10:22:00 15 Court or the Plaintiff's, you know, blah, blah, blah."

10:22:01 16 And my answer was: "Where do I get that?  
10:22:04 17 I'm not arguing to you that the evidence may show that,  
10:22:07 18 but where's the evidence? Help me here."

10:22:10 19 I mean, I asked you for help to give me some  
10:22:12 20 evidence. And I said, "I don't have any affidavits. I  
10:22:15 21 don't have any statements."

10:22:16 22 So what I had, at this point in time, and  
10:22:19 23 it's true to this date, is I had a filing, sealed  
10:22:26 24 filing, by the Government filed prior to this hearing,  
10:22:29 25 that, if you will -- if I'll use the slang one of my law



10:22:33 1 clerks used, "threw these two women under the bus", said  
10:22:35 2 that they knew the truth and didn't -- when they  
10:22:40 3 misrepresented the truth.

10:22:44 4 And, I mean, I asked for help. Help me find  
10:22:47 5 that they didn't do it intentionally. And you gave me  
10:22:49 6 nothing.

10:22:52 7 MR. GILLIGAN: But -- but, Your Honor,  
10:22:54 8 when -- if the Court came to that conclusion that the  
10:22:56 9 evidence that had already been submitted was  
10:22:58 10 insufficient in order to address the Court's concern,  
10:23:02 11 the procedures require, before the Court can issue  
10:23:05 12 sanctions, is to issue some sort of a notice, an order  
10:23:08 13 to show cause --

10:23:09 14 THE COURT: You don't think this is notice?  
10:23:11 15 I asked you to file some evidence.

10:23:12 16 MR. GILLIGAN: But there was no -- there was  
10:23:14 17 no notice to who the intended targets that -- of the  
10:23:18 18 sanctions were. There was no notice that individuals  
10:23:21 19 would be personally sanctioned and in -- and in what  
10:23:23 20 respect. Because we're -- we're entitled, upon -- upon  
10:23:27 21 receipt of the notice, notice that the Court had deemed  
10:23:31 22 insufficient the evidence that was already before it, an  
10:23:34 23 opportunity at that point then to supplement the record  
10:23:37 24 in light of the individuals or entities who were  
10:23:43 25 intended targets of the sanctions, the nature -- and the

10:23:46 1 nature of the sanctions, so we could address both the  
10:23:49 2 basis for imposing sanctions and the appropriateness of  
10:23:52 3 the sanctions to be imposed.

10:23:55 4 And -- and it was not until August 19th,  
10:23:57 5 Your Honor, when the Court finally said to us, assume  
10:24:01 6 that I'm going to find intentional misrepresentations  
10:24:05 7 here. And -- and then we were advised what we could  
10:24:10 8 file at that point was simply briefing on what the  
10:24:13 9 appropriate sanctions would be, what the Court could do,  
10:24:15 10 and what it should -- should do.

10:24:16 11 THE COURT: Okay. And -- and what did you  
10:24:18 12 suggest?

10:24:19 13 MR. GILLIGAN: Well, we -- we continued to  
10:24:22 14 suggest, Your Honor, that there was no evidence, no  
10:24:25 15 clear and convincing evidence, of intentional  
10:24:29 16 misconduct, misrepresentations made in bad faith. That  
10:24:32 17 this was, as we continue to believe, a unbelievably  
10:24:41 18 unfortunate misunderstanding about -- between the Court  
10:24:43 19 and Government counsel over the meaning of the term  
10:24:47 20 "revised DACA".

10:24:50 21 Under circumstances where, yes, people  
10:24:52 22 received notice about the ongoing three-year grants, but  
10:24:55 23 in -- in the situations where we were communicating with  
10:24:58 24 the Court regarding the timing of surreply briefs and PI  
10:25:04 25 hearings where the issue turned on harm to the States

10:25:08 1 due to the increased pool of eligible DACA recipients,  
10:25:16 2 there was simply nothing to bring back to mind in  
10:25:19 3 those -- in those situations this information that, yes,  
10:25:21 4 had been provided to -- to our attorneys but had faded  
10:25:24 5 from memory.

10:25:25 6 THE COURT: And then, at the end, you said,  
10:25:29 7 "regardless, Judge, if you decide to do sanctions, don't  
10:25:32 8 sanction one or two, sanction everybody."

10:25:35 9 MR. GILLIGAN: Well --

10:25:36 10 THE COURT: And now you're complaining about  
10:25:38 11 it.

10:25:38 12 MR. GILLIGAN: Well, we said -- well, we  
10:25:40 13 didn't say to sanction everybody, Your Honor. We said  
10:25:42 14 to sanction the Government as a whole and not to single  
10:25:46 15 out individuals for responsibility.

10:25:48 16 THE COURT: Well, if I -- if -- if I do  
10:25:50 17 that, what's the deterrent effect? If I do that,  
10:25:54 18 Ms. Colmenero's clients, which are the majority of the  
10:25:58 19 States, have to pay the majority of a sanction that they  
10:26:00 20 got because y'all didn't tell the truth to them.

10:26:04 21 They're --

10:26:05 22 MR. GILLIGAN: Well, Your Honor, I mean, as  
10:26:09 23 we said in our September 4th brief, if there was any  
10:26:12 24 showing of harm from the misrepresentations, then --  
10:26:16 25 then, certainly, the Court could -- could consider some

10:26:19 1 sort of a remedy that would address any harm that  
10:26:23 2 resulted from the misrepresentations as -- as -- as the  
10:26:26 3 Court found them to be.

10:26:27 4 But, as -- as yet, there has been no such  
10:26:30 5 showing. And, so, it -- it seems to us that that really  
10:26:33 6 doesn't enter into the equation, at least at the moment.

10:26:35 7 THE COURT: Well, there has been harm and  
10:26:38 8 there has been a showing because they -- they were going  
10:26:39 9 to ask for a hearing before the end of 2014. That's  
10:26:45 10 clear in their opening salvos. And they forewent that  
10:26:48 11 hearing on the representation that nothing was going on.

10:26:53 12 MR. GILLIGAN: Well, Your Honor, as -- as I  
10:26:57 13 read the record of the -- of the Plaintiff's  
10:27:00 14 representations on that point, they said that they were  
10:27:03 15 going to explore the possibility, or they would have  
10:27:07 16 explored the possibility of seeking a temporary  
10:27:10 17 restraining order, if they had known about the  
10:27:12 18 three-year grants.

10:27:13 19 But the question now is, is what -- what  
10:27:14 20 harm is there now from the fact that these three-year  
10:27:17 21 grants are out there? As -- as yet, we submit there's  
10:27:20 22 no showing. And, in fact, that's implicit in the  
10:27:22 23 court's order which says that no PII would be turned  
10:27:25 24 over to the Plaintiffs unless and until they make a  
10:27:28 25 showing of good cause, such as a remediable injury that

10:27:31 1 could be addressed by the production of that  
10:27:33 2 information.

10:27:34 3 THE COURT: So, I mean, the --

10:27:35 4 MR. GILLIGAN: But -- but --

10:27:37 5 THE COURT: -- the Department of Justice,  
10:27:39 6 whose pleadings that you filed in my suit, saying, "we  
10:27:40 7 hold the standard of ethics to be the highest ethics in  
10:27:43 8 the land", basically, you're saying no blood, no foul?

10:27:47 9 MR. GILLIGAN: Not -- not in the event that  
10:27:48 10 there was a miss -- an intentional misrepresentation,  
10:27:51 11 Your Honor, but there -- there has been, we respectfully  
10:27:54 12 submit, no such intentional misconduct.

10:27:57 13 THE COURT: You've given me no proof to show  
10:28:00 14 it's not intentional. In fact, what you've given me is  
10:28:02 15 a brief that says, they knew what the truth was when  
10:28:04 16 they told me exactly the opposite.

10:28:07 17 MR. GILLIGAN: Your -- Your Honor, they had  
10:28:08 18 been informed some time earlier that, as was made public  
10:28:14 19 by the Government in many different places, including  
10:28:16 20 filings in this court, that, yes, DHS was issuing  
10:28:20 21 three-year grants as -- as a --

10:28:21 22 THE COURT: No. No. No. Wait. Wait.  
10:28:22 23 Filings in this court. Tell me what filing in this  
10:28:24 24 court says they were issuing things under 2000 -- I'll  
10:28:28 25 let -- well, maybe I should let Ms. Colmenero say that,

10:28:32 1 but -- but where did it say that?

10:28:33 2 MR. GILLIGAN: It -- it was in the Neufeld  
10:28:37 3 Declaration that --

10:28:38 4 THE COURT: No, it doesn't say that. It --  
10:28:40 5 it -- what the Neufeld Declaration does is repeats what  
10:28:42 6 the Government was going to do. It didn't say it was  
10:28:46 7 actively doing it. And, so, I don't think it's fair to  
10:28:49 8 the citizens of those 26 states, when they questioned  
10:28:54 9 the Government, for the question to not tell them the  
10:28:57 10 truth, and then say, well, hidden in a five hundred page  
10:29:01 11 affidavit, or pleading, is, in one footnote, is  
10:29:05 12 something where we repeat the policy. And, from that,  
10:29:07 13 she's supposed to define that she's been lied to.

10:29:10 14 MR. GILLIGAN: The point is a different one,  
10:29:12 15 Your Honor, which is that it's inconsistent to -- to, we  
10:29:16 16 submit, to conclude that the Government would be trying  
10:29:19 17 to hide a fact that was in the public 2014 guidance,  
10:29:24 18 that was on -- that was on -- that was on the DHS  
10:29:28 19 website, and that, however prominently stated, was in a  
10:29:31 20 public filing in -- that we made in this proceeding.

10:29:35 21 THE COURT: Well, Mr. Gilligan, if that's  
10:29:36 22 the case, why did the Government wait until there were  
10:29:40 23 over a hundred thousand? Why didn't they come forward  
10:29:43 24 when there was 10,000, or 20,000, or 30,000? And the  
10:29:47 25 documents you've given this court show that it was --

10:29:50 1 when you filed the Motion to Stay on the merits, that we  
10:29:53 2 said, oh, my, God, if the Judge finds out about this on  
10:29:56 3 his own, he's going to hate us when we file this Motion  
10:30:00 4 to Stay. And that was the impetus for filing it.

10:30:02 5 MR. GILLIGAN: That -- but that was not the  
10:30:04 6 case, Your Honor.

10:30:05 7 THE COURT: Well, wait a minute. How is it  
10:30:07 8 not the case? Tell me.

10:30:09 9 MR. GILLIGAN: Again, what -- as -- as -- as  
10:30:15 10 the record shows, albeit in the documents that we  
10:30:20 11 submitted to the Court under seal in our response to the  
10:30:23 12 April 7th order, it was not until after our February, I  
10:30:29 13 believe, 23rd Motion to Stay the preliminary injunction,  
10:30:37 14 that the defining moment occurred when DOJ counsel  
10:30:41 15 became aware that 108,000 grants of three-year DACA had  
10:30:46 16 been -- had been issued prior to the injunction.

10:30:48 17 And -- and at -- at that point, within just  
10:30:52 18 a handful of business days, Your Honor, we submitted the  
10:30:55 19 March 3rd advisory on our own initiative, without  
10:30:59 20 prompting by any public reporting or -- or -- or  
10:31:03 21 information coming to light by third parties, disclosing  
10:31:06 22 that fact.

10:31:07 23 And, at the same time, Your Honor, let me --  
10:31:09 24 let me emphasize, referencing our prior statements  
10:31:12 25 regarding the timing of the implementation of -- of --

10:31:17 1 THE COURT: Well, we can go into that if you  
10:31:19 2 want to go into the sealed evidence you filed, you know,  
10:31:21 3 where --

10:31:21 4 MR. GILLIGAN: Even the public evidence  
10:31:23 5 shows the speed with which that March 3rd advisory was  
10:31:27 6 drafted and -- and was -- and was filed. And it -- and  
10:31:31 7 it explicitly not only disclosed the fact of the  
10:31:37 8 three-year grants and the magnitude, but also referenced  
10:31:41 9 the, if -- if -- if you will, the -- the potential for  
10:31:47 10 confusion with prior statements that had been made  
10:31:50 11 regarding the implementation of the 2014 guidance.

10:31:54 12 THE COURT: My question to you is: If you  
10:31:56 13 were truly being forthcoming, why didn't the first week  
10:31:59 14 in January say we've already done 10,000? Why in the  
10:32:03 15 second week of January, we've already done 20,000?

10:32:06 16 MR. GILLIGAN: Because, as we explained in  
10:32:08 17 our -- our filing, Your Honor, this -- and as -- as --  
10:32:10 18 and as were counted in the Court's May 19th order, it --  
10:32:14 19 it was a fact that a group of extraordinarily busy  
10:32:18 20 individuals in very high profile and fast moving PI  
10:32:21 21 litigation had been informed of, but then it was an  
10:32:26 22 issue that receded from memory because the focus of the  
10:32:30 23 proceedings, as -- as defined by the Plaintiffs own PI  
10:32:33 24 submissions, was on the harm that would allegedly accrue  
10:32:37 25 to the States due to the modification of the eligibility



10:32:41 1 guidelines that would increase the pool of potential  
10:32:44 2 applicants for deferred action.

10:32:46 3 That -- the -- the -- the -- the crux of  
10:32:49 4 these communications with the Court, oral and written,  
10:32:52 5 was, you know, how can we time these proceedings in such  
10:32:55 6 a way as to give everybody time to get done what needs  
10:33:00 7 to get done while still leaving time to prevent the  
10:33:04 8 irreparable harm that the States themselves had  
10:33:06 9 identified as -- as -- as being threatened.

10:33:08 10 THE COURT: And do I have an affidavit from  
10:33:10 11 anyone at DOJ that says that?

10:33:13 12 MR. GILLIGAN: You -- you do not -- you do  
10:33:14 13 not have an affidavit that says that, Your Honor. But  
10:33:16 14 what is also lacking in the record, and we submit, is  
10:33:19 15 the third basis on which we are likely to prevail in the  
10:33:22 16 Court of Appeals, is that there is not clear and  
10:33:24 17 convincing evidence when the record is viewed as a whole  
10:33:30 18 to come to the conclusion, to support the conclusion,  
10:33:33 19 that the representations that were made to the Court  
10:33:36 20 were the product of deceit rather than a  
10:33:39 21 misunderstanding about what was on the Court's mind and  
10:33:45 22 what was important for purposes of addressing the issues  
10:33:48 23 that were raised during those communications.

10:33:51 24 None of which specifically talked about the  
10:33:53 25 issue of three-year grants. We're not talking about a

10:33:56 1 situation here where a -- a lawyer was specifically  
10:33:58 2 asked, is this occurring now? Is the Department of  
10:34:00 3 Homeland Security issuing three-year terms of DACA --

10:34:05 4 THE COURT: I didn't ask you were they  
10:34:06 5 issuing, but I asked about the three-year terms. I  
10:34:09 6 asked, not the States, and I was told that they wouldn't  
10:34:14 7 begin accepting applications until mid February.

10:34:17 8 MR. GILLIGAN: Well, Your -- Your Honor --

10:34:19 9 THE COURT: And they'd already granted  
10:34:21 10 applications.

10:34:22 11 MR. GILLIGAN: Your Honor, it's -- it --  
10:34:24 12 during the January 15th, I believe, 2015 PI hearing,  
10:34:31 13 yes, there -- during -- during an exchange with both  
10:34:36 14 Government counsel and the Plaintiff's counsel folks, at  
10:34:39 15 least as far as the transcript reveals, may have been  
10:34:42 16 kind of talking over one another, the -- the Court asked  
10:34:45 17 about the increase in years as Government counsel was  
10:34:48 18 discussing the changes to the eligibility guidelines  
10:34:55 19 under DACA.

10:34:56 20 And -- and -- and even if counsel clearly  
10:35:00 21 heard or -- or -- and appreciated the different thrusts  
10:35:04 22 of the court's interjection there, it -- it wasn't until  
10:35:07 23 much, much later in the hearing, 40 transcript pages  
10:35:12 24 later in the hearing, that -- that the cited exchange in  
10:35:16 25 the -- in the court's order occurred with Government

10:35:18 1 counsel, again, discussing the February 18th  
10:35:22 2 implementation date.

10:35:24 3 And so there's nothing to indicate that the  
10:35:26 4 court's brief reference to the increase in years was  
10:35:30 5 anywhere on counsel's mind at the time that they were --  
10:35:34 6 excuse me, that you and counsel were discussing, I  
10:35:36 7 believe it was, the timing of the Government's surreply  
10:35:40 8 in opposition to the preliminary injunction.

10:35:43 9 THE COURT: Well, the whole issue was  
10:35:46 10 whether there was anything going on. And obviously  
10:35:47 11 there was.

10:35:48 12 MR. GILLIGAN: Well, that -- that statement  
10:35:49 13 was framed by prior references to the implementation of  
10:35:54 14 the new eligibility guidelines in which the Plaintiff's  
10:35:58 15 claim of irreparable harm was rooted, Your Honor.

10:36:01 16 Your -- Your Honor, it's -- it's -- it is --  
10:36:04 17 it is not my objective here today --

10:36:10 18 THE COURT: Well, here's what you said in  
10:36:11 19 your brief: "The Government does not dispute and indeed  
10:36:14 20 has never disputed that the three-year deferrals were  
10:36:18 21 pursuant to the 2014 deferred action guidance.

10:36:22 22 Likewise, there is no dispute that the Government also  
10:36:24 23 understood the change from two to three years of  
10:36:26 24 deferred action to be a contested issue in the case."

10:36:29 25 That's from your brief.

10:36:31 1 MR. GILLIGAN: That's correct, Your Honor.  
10:36:32 2 We're not -- we don't -- we don't dispute those facts.  
10:36:35 3 We're not -- we're not trying to run away from the truth  
10:36:37 4 of those facts. But the question is, is: In -- in --  
10:36:41 5 in the moments when counsel were engaged in discussions  
10:36:44 6 with the Court about the timing of the hearing, the  
10:36:48 7 timing of a surreply -- and the conversation was framed  
10:36:54 8 by references to the Plaintiff's arguments of  
10:36:58 9 irreparable harm; harm, again, that was rooted not in  
10:37:02 10 the increase in terms of deferred action, but the  
10:37:04 11 increase in the pool of eligibles for deferred action --  
10:37:08 12 the record is simply not clear and convincing that  
10:37:11 13 counsel were speaking that they were choosing their  
10:37:16 14 words with an intent to deceive anyone or -- or mislead  
10:37:20 15 them.

10:37:20 16 THE COURT: What evidence do I have that  
10:37:21 17 they misunderstood the question or -- or, you know, we  
10:37:26 18 didn't understand it, or we didn't understand the State  
10:37:30 19 was contesting it? What evidence do I have? Not  
10:37:32 20 pleadings, but do I have an affidavit that says that?  
10:37:34 21 Do I have anything that says, Judge, we misunderstood  
10:37:40 22 this?

10:37:42 23 I mean, and -- and, Mr. Gilligan, I'm not  
10:37:45 24 fussing at you. But -- but you've got to look at it. I  
10:37:52 25 went to great lengths to say how much I do not like

10:37:57 1 sanctioning lawyers.

10:38:00 2 And I've been on the bench 14 years now and  
10:38:05 3 I've only done it twice; one was a monetary sanction and  
10:38:10 4 one I -- I -- I told him he had to write a letter of  
10:38:11 5 apology.

10:38:12 6 And, you know, in that context, I say,  
10:38:19 7 Government, United States, DOJ, give me some affidavits.  
10:38:23 8 Give me something I can hang my hat on. And you gave me  
10:38:27 9 nothing.

10:38:28 10 MR. GILLIGAN: Your -- Your Honor, I -- I --  
10:38:32 11 I could say two things at this point; one -- one is a  
10:38:35 12 legal point, which is that it is, of course, not the  
10:38:39 13 burden of the individual or entity that is targeted for  
10:38:44 14 sanctions to disprove the allegations against them. It  
10:38:49 15 is -- it is a -- a requirement before inherent power  
10:38:55 16 sanctions may be issued that there be clear and  
10:38:58 17 convincing evidence of bad faith. And we submit --

10:39:01 18 THE COURT: Well, I used your brief as clear  
10:39:03 19 and convincing evidence because you conceded the fact  
10:39:05 20 that you didn't tell the truth in your briefs.

10:39:08 21 MR. GILLIGAN: No, Your Honor, I don't think  
10:39:10 22 we conceded that. I think what we conceded is that  
10:39:14 23 we -- we conceded -- we -- we conceded the truth that  
10:39:16 24 people have received notice of the fact here regarding  
10:39:20 25 the three-year terms. And -- but there is no evidence

10:39:24 1 that, in the context of the discussions that were  
10:39:27 2 occurring, that -- that counsel were conscious in the  
10:39:32 3 moment of that fact and intended to conceal that fact  
10:39:34 4 from the Court or the Plaintiffs.

10:39:36 5 And, Your Honor, it is not my -- it is not  
10:39:39 6 my objective here to persuade this court otherwise.  
10:39:46 7 We -- we -- I think the point here is -- is -- the  
10:39:50 8 question that the Court has put before me is on what  
10:39:53 9 basis do we believe we will prevail in the Court of  
10:39:56 10 Appeals? And while we certainly do not question the  
10:39:59 11 Court's belief that there was an intentional  
10:40:02 12 misrepresent -- several even mis -- intentional  
10:40:06 13 misrepresentations made here, in -- in the first place,  
10:40:11 14 we believe just as strongly that that simply is not so,  
10:40:15 15 Your Honor.

10:40:15 16 And we submit that the record taken as a  
10:40:19 17 whole does not contain clear and convincing evidence to  
10:40:21 18 support that finding.

10:40:22 19 And, so, simply to respond to your question,  
10:40:25 20 that is the third basis on which we believe we are  
10:40:27 21 likely to prevail in the Court of Appeals in this  
10:40:30 22 matter.

10:40:32 23 The second reason, of course, would be the  
10:40:38 24 irreparable injury that flows to the Government from the  
10:40:42 25 court's order.

10:40:44 1 We have -- have laid out the injury in  
10:40:49 2 our -- our briefs and I can just briefly --

10:40:52 3 THE COURT: What is -- what is the injury  
10:40:53 4 that flows to the Government?

10:40:55 5 MR. GILLIGAN: The -- the -- the injury is  
10:41:01 6 threefold, Your Honor. The -- the injury that flows to  
10:41:04 7 the Department of Justice from the requirements that the  
10:41:06 8 Court is laying on the Attorney General's shoulders is  
10:41:11 9 the intrusion on the Attorney General's Constitutional  
10:41:14 10 and statutory authority to supervise litigation, the  
10:41:19 11 conduct of litigation on behalf of the United States,  
10:41:22 12 and to oversee the performance of the attorneys who act  
10:41:26 13 under her direction.

10:41:27 14 As -- as we have set out in our papers, we  
10:41:31 15 believe that that requirement to -- to execute a five  
10:41:38 16 year plan of continuing legal education for three  
10:41:41 17 thousand attorneys, above and beyond what the Department  
10:41:44 18 of Justice already requires, transgression --  
10:41:47 19 transgresses the separation of powers. And, as such,  
10:41:52 20 constitutes irreparable injury.

10:41:54 21 THE COURT: I -- I never said above and  
10:41:55 22 beyond what you already require.

10:41:56 23 MR. GILLIGAN: Well, the -- fair point,  
10:42:00 24 Your Honor. But the -- the -- the problem is, is that,  
10:42:03 25 well, in terms of -- in terms of hours it already is and

10:42:06 1 there's a question of -- that we would have to evaluate  
10:42:10 2 whether compliance with the prescribed program of  
10:42:16 3 continuing ethics education that the Court has laid out  
10:42:20 4 is -- would be -- would satisfy the requirements that  
10:42:26 5 the Attorney General has determined are appropriate.

10:42:29 6 THE COURT: Isn't there a Congressional  
10:42:31 7 mandate called the McDade Amendment that you have to be  
10:42:35 8 knowledgeable and comply with the rules of ethics in  
10:42:37 9 whatever state you're practicing in?

10:42:39 10 MR. GILLIGAN: There -- there -- there is --  
10:42:40 11 there is -- there is a requirement under the McDade Act,  
10:42:43 12 yes, that we must comply with the ethical requirements  
10:42:46 13 of the states in which we practice. And -- and --

10:42:49 14 THE COURT: How -- how -- how do you comply  
10:42:50 15 with it if you don't know what they are?

10:42:52 16 MR. GILLIGAN: Well, the -- the -- the  
10:42:53 17 department does -- the department does impose annual  
10:43:01 18 ethics training requirements, particular legal ethics  
10:43:07 19 requirements, on its attorneys.

10:43:08 20 But it is -- it is under the separation of  
10:43:10 21 powers, Your Honor, the Attorney General's  
10:43:13 22 responsibility to determine what is necessary and  
10:43:15 23 appropriate to comply with the mandate of the  
10:43:19 24 McDade Act.

10:43:19 25 It is not within the province of a court



10:43:22 1 exercising, any court, exercising its inherent sanctions  
10:43:27 2 power to direct the Attorney General on how to ensure  
10:43:32 3 the ethical conduct of department attorneys or to comply  
10:43:35 4 with the requirements of the McDade Act.

10:43:38 5 And so --

10:43:39 6 THE COURT: So what this boils down to is,  
10:43:43 7 you're telling me, Judge, we're the DOJ, we can lie,  
10:43:47 8 cheat and steal and it doesn't matter? And you can't do  
10:43:50 9 anything about it?

10:43:51 10 MR. GILLIGAN: With all due respect,  
10:43:53 11 Your Honor, we're not telling this court any such thing.

10:43:55 12 THE COURT: Well, tell me -- let's go back.  
10:43:57 13 Let's -- let's turn back the clock. At the April 19th  
10:44:01 14 hearing, I asked you to find -- tell me what kind of  
10:44:03 15 sanctions should I have issued. Let's -- I'll turn back  
10:44:10 16 the clock. What's the old Mr. Peabody? We'll do the  
10:44:14 17 wayback machine. And we'll go back to: What sanctions,  
10:44:18 18 Mr. Gilligan, should -- what -- what's appropriate?  
10:44:22 19 When somebody who knows that the other side is depending  
10:44:27 20 on the truth, tells them something that's not true? And  
10:44:32 21 I -- what I hear you saying is I shouldn't do anything.

10:44:35 22 MR. GILLIGAN: Well, Your Honor, we -- we  
10:44:36 23 approached the question from different premises which  
10:44:39 24 we've already covered at --

10:44:41 25 THE COURT: Well, wait a minute.

10:44:42 1 MR. GILLIGAN: -- covered at length here  
10:44:43 2 this morning.

10:44:43 3 THE COURT: What -- what is -- let's --  
10:44:45 4 let's -- let's back up. What premises is different?  
10:44:48 5 What the DOJ lawyers told the States was not true.  
10:44:55 6 Agreed? I'm not talking about intent, whether they did  
10:44:59 7 it intentionally, whether they didn't do it  
10:45:01 8 intentionally. What they told them was not true,  
10:45:05 9 correct?

10:45:06 10 MR. GILLIGAN: In -- in -- in -- in the  
10:45:11 11 context of the not entirely clear --

10:45:15 12 THE COURT: You're not going to answer that;  
10:45:17 13 are you?

10:45:17 14 MR. GILLIGAN: I -- I --

10:45:17 15 THE COURT: You're -- you won't --

10:45:19 16 MR. GILLIGAN: I am -- I am going to answer  
10:45:20 17 it.

10:45:20 18 THE COURT: The sun rises in the east.  
10:45:23 19 True?

10:45:24 20 MR. GILLIGAN: Yes, Your Honor.

10:45:25 21 THE COURT: Okay. What they told the States  
10:45:28 22 was not true? Now, whether they didn't tell it by  
10:45:31 23 accident or not, correct?

10:45:34 24 MR. GILLIGAN: If what they -- if -- if what  
10:45:35 25 was said was interpreted to mean that three-year grants

10:45:39 1 were not being issued under the 2012 DACA policies at --  
10:45:46 2 at the time of those conversations, if interpreted to  
10:45:48 3 mean that, yes, Your Honor, that was -- that was  
10:45:50 4 incorrect.

10:45:51 5 But that was not the intended meaning of the  
10:45:55 6 individuals who made those statements and we submit  
10:45:59 7 there is no clear and convincing evidence on which to  
10:46:02 8 conclude that it was their intent.

10:46:04 9 THE COURT: All right. Let me ask you the  
10:46:05 10 flip side. Is it your position that the reverse would  
10:46:09 11 be fine? Ms. Colmenero can tell you whatever she wants  
10:46:13 12 to tell you, whether it's true or not, and the Plaintiff  
10:46:16 13 States can -- can do whatever they want to do and  
10:46:18 14 they're not bound by the truth? Because that's what I  
10:46:23 15 hear you saying.

10:46:24 16 MR. GILLIGAN: Your Honor, if that's --  
10:46:26 17 if -- if that's what you hear me saying, then I must  
10:46:28 18 apologize for not being clear because that -- what --  
10:46:32 19 what the Court is positing is, of course, unacceptable  
10:46:37 20 for any litigant, lawyer, regardless of which side of  
10:46:41 21 the case they're on.

10:46:42 22 But that's not what happened here and we do  
10:46:44 23 not believe there is evidence to support the imposition  
10:46:47 24 of a sanction on the basis of a conclusion that that is  
10:46:49 25 what happened here.

10:46:50 1 And so that is what informed our response in  
10:46:53 2 our September 4th brief to the question put to us for  
10:46:58 3 briefing at the August 19th hearing. The Court said,  
10:47:01 4 "what sanction could and should this court issue under  
10:47:05 5 the circumstances?" And we said, "in -- in  
10:47:09 6 circumstances where there is no clear and convincing  
10:47:11 7 evidence of intentional bad faith misconduct, no  
10:47:14 8 appropriate sanction could be issued."

10:47:16 9 We're not --

10:47:17 10 THE COURT: How many -- how many  
10:47:18 11 misstatements, I'll use that term because I think you'll  
10:47:22 12 agree with that one, at least, would it take to be clear  
10:47:26 13 and convincing evidence?

10:47:29 14 MR. GILLIGAN: I -- I think --

10:47:33 15 THE COURT: From people who knew what the  
10:47:35 16 truth was, how many misrepresentations?

10:47:38 17 MR. GILLIGAN: I -- I think, Your Honor,  
10:47:39 18 that the -- well, we're talking about different people  
10:47:43 19 at different times, all of which were remote in time  
10:47:47 20 from the point in which they had been informed of the  
10:47:50 21 activity in -- in question.

10:47:54 22 So I think the issue isn't how many times,  
10:47:56 23 the issue is, on -- on those occasions, what was the  
10:47:59 24 intent of those different individuals?

10:48:01 25 And there was -- and -- and we submit that

10:48:01 1 the record, at the very least, does not support a  
10:48:05 2 conclusion by clear and convincing evidence that it was  
10:48:08 3 bad faith intent.

10:48:09 4 And, again, Your -- Your Honor, I -- it  
10:48:12 5 is -- I -- I understand the Court's ruling on this  
10:48:14 6 matter and it's not my intention to try to change the  
10:48:17 7 Court's mind on this point, only -- only to make the  
10:48:19 8 point that we believe that, when the record is viewed as  
10:48:24 9 a whole, we will prevail on this issue, or on a --  
10:48:29 10 several other issues that I've discussed with you this  
10:48:31 11 morning in -- in -- in the merits of our mandamus -- our  
10:48:36 12 request for mandamus review in the Court of Appeals.

10:48:40 13 THE COURT: Thank you, Mr. Gilligan.

10:48:42 14 Ms. Perales, do you want to weigh in?

10:48:44 15 MS. PERALES: Thank you, Your Honor.

10:48:50 16 THE COURT: Ms. Perales, let me start with  
10:48:52 17 you on this.

10:48:53 18 MS. PERALES: May I make two initial points  
10:48:55 19 or --

10:48:55 20 THE COURT: Go ahead.

10:48:56 21 MS. PERALES: All right. One is that the  
10:48:59 22 Response in Support of the Motion to Stay by the  
10:49:05 23 Government on behalf of the Doe's only addresses that  
10:49:09 24 portion of the court's May 19 order that's on page 22-23  
10:49:14 25 regarding the filing under seal of names, addresses and

10:49:21 1 identifying information.

10:49:22 2 Which is a very long sentence, so, if the  
10:49:25 3 Court doesn't mind my referring to it as the DACA  
10:49:28 4 portion of the May 19 order.

10:49:30 5 Second, understanding that the Government  
10:49:35 6 has filed an amended certificate of conference regarding  
10:49:39 7 the States' willingness to postpone and with  
10:49:45 8 appreciation for the States' position, our position is  
10:49:48 9 that a stay would be appropriate.

10:49:52 10 Otherwise, we're going to be in a situation,  
10:49:54 11 I think, where we're looking at 30 or 40 day  
10:49:57 12 postponements through the summer. So our preference  
10:50:00 13 would be for the Court to grant the stay of that DACA  
10:50:04 14 portion of its order pending the outcome of the appeal.

10:50:07 15 THE COURT: Let me -- no, I understand that.

10:50:08 16 MS. PERALES: Thank you, Your Honor.

10:50:09 17 THE COURT: Let me -- let me ask you a  
10:50:10 18 question. Do you think it's all right for either side  
10:50:14 19 of a lawsuit to tell untruths to the other side?  
10:50:19 20 Whether intentionally or not?

10:50:20 21 MS. PERALES: I don't think it's all right,  
10:50:22 22 but I want to make clear that the Doe's are not taking a  
10:50:25 23 position --

10:50:25 24 THE COURT: I know. Well, wait. You're not  
10:50:25 25 taking the position that people ought to tell the truth?

10:50:25 1 MS. PERALES: No, the rest of my sentence  
10:50:32 2 was going to be that we're not taking a position on that  
10:50:33 3 portion of the May 19 order dealing with attorneys --

10:50:35 4 THE COURT: No, but I'm -- I'm leading to  
10:50:36 5 the point that you are taking a position on. And that's  
10:50:39 6 why I asked the question. You understand, if --  
10:50:44 7 let's -- let's assume everything was accidental, okay?  
10:50:49 8 Unintentional, accidental. What's the first job that an  
10:50:54 9 attorney has to do, ethically, when they make a  
10:50:58 10 misrepresentation in court?

10:51:00 11 MS. PERALES: Once they realize that?

10:51:02 12 THE COURT: Yes.

10:51:03 13 MS. PERALES: They have to notify the Court,  
10:51:04 14 Your Honor.

10:51:04 15 THE COURT: That's right. And what's the  
10:51:06 16 second obligation? They have to remediate it.

10:51:12 17 Now, in this case, and this is where I want  
10:51:17 18 your help, remediation would be go get back the 108,000  
10:51:25 19 three-year certificates.

10:51:26 20 One, that would be very costly, I'm sure;  
10:51:30 21 two, for all the reasons mentioned in your brief, that  
10:51:35 22 may not be a good thing to do; and, three, I'll throw  
10:51:44 23 this one in, if the Supreme Court decides against the  
10:51:49 24 Fifth Circuit, or reversing the Fifth Circuit that  
10:51:52 25 affirmed me, the three-year certificates would be okay;

10:51:58 1 wouldn't they?

10:51:59 2 MS. PERALES: Yes, Your Honor.

10:51:59 3 THE COURT: Okay. So here's -- I'm -- and  
10:52:02 4 what I'm doing is putting you in the dilemma I was in.  
10:52:07 5 And you'll notice what I ordered didn't affect your  
10:52:12 6 clients at all; number one.

10:52:15 7 Number two, it only affects a small  
10:52:17 8 subsection of the DACA people.

10:52:20 9 Number two, I ordered it filed under seal so  
10:52:24 10 it would never be revealed to anyone. It doesn't change  
10:52:27 11 anybody's status, doesn't change their documentation.

10:52:35 12 Number three, it wasn't going to be  
10:52:39 13 reviewed, except to make sure it got filed, by anyone  
10:52:45 14 until after the Supreme Court ruled.

10:52:48 15 And then, after that, only on a showing that  
10:52:53 16 the States would have to make that they were somehow  
10:52:58 17 being damaged, not by the DACA people, but by the  
10:53:03 18 misrepresentations of the United States.

10:53:08 19 And I built in all those safe guards. And I  
10:53:11 20 did it for your, not your clients, but the DACA people.  
10:53:18 21 Because my alternative was to, A, do nothing, which, I  
10:53:25 22 think, if you polled every Judge in the world, they --  
10:53:32 23 they would say a Judge is not doing his or her job if he  
10:53:35 24 allows unethical conduct to go on in their court; or,  
10:53:39 25 two, order what the Government probably should have



10:53:41 1 already been doing, which is remediate the situation.

10:53:44 2 So help me here, what can I do? And -- and  
10:53:51 3 I've already told you I'm going to put it off. So --  
10:53:55 4 and that may be -- that may be, in and of itself, it may  
10:53:59 5 solve the problem.

10:54:00 6 MS. PERALES: Well, Your Honor, a stay  
10:54:02 7 certainly would. I have a few quick points in response.

10:54:05 8 First of all, the Court -- the Doe's do  
10:54:09 9 recognize and appreciate the Court's effort at narrow  
10:54:13 10 tailoring. Please don't understand anything I say to be  
10:54:16 11 ignoring that.

10:54:18 12 However, it's not our position that, when  
10:54:21 13 the Government was preparing its March 3rd advisory to  
10:54:26 14 the Court following the injunction in February 2015,  
10:54:30 15 that remediation necessarily included doing something  
10:54:34 16 about the three-year grants. That's something I haven't  
10:54:37 17 had a chance to think through, but I'm not sure that  
10:54:40 18 remediation would include that.

10:54:43 19 Second of all, with respect to not many, we  
10:54:48 20 would respectfully say that, in addition to the  
10:54:51 21 declarations that we filed of Cristina R. in San Carlos  
10:54:56 22 here in the valley, of Javier H.G. in Houston, it is  
10:55:01 23 50,000 young individuals. And that is a pretty  
10:55:04 24 substantial number of --

10:55:06 25 THE COURT: Explain the number to me.

10:55:07 1 MS. PERALES: Well, it's our understanding  
10:55:09 2 that there are 50,000 individuals living in the  
10:55:13 3 Plaintiff States who received three-year grants.

10:55:14 4 THE COURT: Oh, I see what you're saying.  
10:55:16 5 In the Plaintiff States.

10:55:17 6 MS. PERALES: Yes, in the Plaintiff States,  
10:55:18 7 Your Honor.

10:55:18 8 THE COURT: Okay. Okay.

10:55:19 9 MS. PERALES: And, so, dealing with these  
10:55:21 10 other two points that it doesn't affect the Doe's and  
10:55:24 11 that the filing is under seal, as a technical matter,  
10:55:29 12 yes. But as made clear in the declarations of Cristina  
10:55:33 13 and Javier, and to some extent in the Leon Rodriguez  
10:55:36 14 declaration, the fear and confusion that has flowed,  
10:55:39 15 which is not entirely in the court's control and it may  
10:55:43 16 not be the Court's intent --

10:55:45 17 THE COURT: Well, let -- let me -- what is  
10:55:46 18 in my control? This all stems from misrepresentations  
10:55:50 19 made in this courtroom, not by me and not by counsel for  
10:55:53 20 the Plaintiff States.

10:55:55 21 MS. PERALES: Yes, Your Honor.

10:55:56 22 THE COURT: Okay.

10:55:56 23 MS. PERALES: And within the Court's  
10:55:59 24 inherent sanction authority, we believe there's a number  
10:56:02 25 of things that the Court can do. But the sanctions

10:56:08 1 power that is inherent has to be exercised with  
10:56:11 2 restraint, discretion, that it has to take into account  
10:56:14 3 the effect of the equitable order on innocent third  
10:56:18 4 parties, and that it should be directed to those who  
10:56:22 5 committed the misconduct.

10:56:23 6 THE COURT: And one of the things you've  
10:56:24 7 suggested in your brief was continuing legal education.

10:56:29 8 MS. PERALES: And --

10:56:30 9 THE COURT: Which is what the Court ordered.

10:56:31 10 MS. PERALES: And we're not here to speak on  
10:56:34 11 that portion of the court's order, or any other  
10:56:37 12 suggested sanction that goes to the attorneys or to the  
10:56:41 13 agency. We're only here to speak about the effect that  
10:56:44 14 it would have on the 50,000 DACA three-year grant  
10:56:48 15 recipients and other non-citizens whose faith will be  
10:56:52 16 shaken and confidence will be shaken in their  
10:56:55 17 expectation of privacy with USCIS.

10:56:58 18 THE COURT: What -- would their faith not be  
10:57:00 19 shaken if they knew that the United States Government  
10:57:02 20 was not telling the truth?

10:57:05 21 MS. PERALES: I think the more immediate  
10:57:07 22 question for the three-year grant recipients has to do  
10:57:11 23 with their expectation of privacy in the materials that  
10:57:16 24 they provided to USCIS and the fact that many of them,  
10:57:19 25 when they provided their home address, which is probably

10:57:22 1 still their point of contact, are living with family  
10:57:24 2 members, parents, and siblings who are undocumented.

10:57:28 3 And the possibility of, first, the breach of  
10:57:31 4 confidentiality by filing with the Court, even under  
10:57:34 5 seal, which is a point that, unfortunately, Your Honor,  
10:57:37 6 a lot of people can't really appreciate because they  
10:57:39 7 don't understand what it means to file under seal; and  
10:57:43 8 then, of course, with the potential for disclosure to 26  
10:57:46 9 states and their agencies that might implement some kind  
10:57:52 10 of remedy, it's a very wide distribution and a great  
10:57:56 11 deal of fear that either they or their immediate  
10:57:59 12 relatives would be subject to some type of negative  
10:58:05 13 action.

10:58:06 14 It is a powerful fear and it bleeds over to  
10:58:09 15 the Doe's as well who are hoping someday to be able to  
10:58:12 16 go to USCIS and provide all of this very private and  
10:58:15 17 sensitive information, including medical records, school  
10:58:18 18 records, marital status, fingerprints, photographs.

10:58:22 19 THE COURT: But -- but let me interrupt you  
10:58:24 20 there just a second.

10:58:25 21 MS. PERALES: Yes.

10:58:25 22 THE COURT: But they're doing that trusting  
10:58:27 23 the Government is going to live up to their side of the  
10:58:30 24 bargain, correct?

10:58:31 25 MS. PERALES: Yes, Your Honor.

10:58:32 1 THE COURT: Trusting that the Government's  
10:58:33 2 going to tell the truth, correct?

10:58:35 3 MS. PERALES: Yes, Your Honor.

10:58:35 4 THE COURT: All right. So it's important to  
10:58:37 5 them that the United States Government tell the truth;  
10:58:41 6 isn't it?

10:58:41 7 MS. PERALES: It is. And the only point I  
10:58:43 8 was hoping to make is that the immediate concern does  
10:58:46 9 have to do with the disclosure of personal information.  
10:58:50 10 And, of course --

10:58:51 11 THE COURT: Well, I -- I understood that.

10:58:51 12 MS. PERALES: Okay.

10:58:51 13 THE COURT: And I -- believe me, I -- I  
10:58:55 14 tried to build in enough safe guards to assuage their  
10:59:00 15 concerns.

10:59:01 16 MS. PERALES: Understood, Your Honor, and --  
10:59:02 17 and very much appreciated.

10:59:03 18 However, this is a point that wasn't  
10:59:05 19 necessarily touched on earlier, so if I can make it now?

10:59:08 20 THE COURT: Go ahead.

10:59:09 21 MS. PERALES: The order with respect to the  
10:59:11 22 DACA recipients does have the practical effect of  
10:59:15 23 granting an injunction and a very serious effect on the  
10:59:18 24 50,000.

10:59:19 25 And, for that reason, we believe that that

10:59:22 1 portion of the sanctions order is more of an injunction  
10:59:27 2 and that it touches on the merits in a way that the  
10:59:31 3 Court does not have jurisdiction to do at this point in  
10:59:35 4 the litigation.

10:59:35 5 THE COURT: Tell me -- tell me -- walk me  
10:59:38 6 through that.

10:59:39 7 MS. PERALES: Okay. Well, first, the case,  
10:59:40 8 which we didn't have in our brief, is Gulfstream  
10:59:45 9 Aerospace versus Mayacamas, 485 U.S. 271. And it has to  
10:59:48 10 do with what a court can do with injunctive relief while  
10:59:53 11 a case is pending on appeal.

10:59:54 12 And they're -- the Court does have the  
10:59:57 13 power, for example, to use its inherent authority to  
11:00:00 14 sanction and it also has the power to issue certain  
11:00:02 15 injunctions in maintenance of the status quo while a  
11:00:05 16 case is pending on appeal.

11:00:07 17 But it is the Doe's position that that DACA  
11:00:10 18 portion of the sanctions order, because it is  
11:00:12 19 essentially requiring disclosure of information that the  
11:00:16 20 Court will keep in contemplation of remediating damages  
11:00:21 21 that are experienced by the States as a result of the  
11:00:25 22 three-year grants, touches on the very questions that  
11:00:28 23 are pending before the U.S. Supreme Court.

11:00:31 24 There cannot be any damage to the States  
11:00:33 25 flowing from a three-year grant if the Supreme Court

11:00:37 1 decides that there is no standing of Plaintiffs or that  
11:00:41 2 DAPA and expanded DACA are --

11:00:45 3 THE COURT: Well, there might be damage, but  
11:00:46 4 not recoverable damage.

11:00:48 5 MS. PERALES: And, so, as a result, we  
11:00:51 6 believe that the DACA portion of the sanctions order  
11:00:54 7 touches so closely on issues that will be resolved  
11:00:58 8 ultimately by the Supreme Court that this is -- does not  
11:01:02 9 fall in the category of maintaining the status quo, but,  
11:01:06 10 instead, is more of an affirmative injunction that the  
11:01:10 11 Court cannot do at this time.

11:01:11 12 And this simply goes to the question whether  
11:01:14 13 a stay is warranted because the Doe's are likely to  
11:01:18 14 prevail on the merits on appeal.

11:01:21 15 And so I wanted to highlight that point  
11:01:24 16 because it wasn't one that -- that was brought up  
11:01:26 17 earlier. I've already spoken about the limited nature  
11:01:29 18 of the sanction power and the innocent third parties  
11:01:32 19 that would be affected here.

11:01:34 20 And I did want to touch on the fact that,  
11:01:37 21 because the three-year grants themselves are valid and  
11:01:40 22 will remain valid until and unless enjoined by the Court  
11:01:45 23 under something that the Supreme Court will tell us  
11:01:48 24 shortly, the Plaintiffs don't have use for the  
11:01:52 25 information now.

11:01:54 1 And that makes this situation particularly  
11:01:57 2 appropriate for a stay pending outcome of the appeal.

11:02:02 3 THE COURT: Okay.

11:02:03 4 MS. PERALES: Did the Court have any other  
11:02:05 5 questions?

11:02:06 6 THE COURT: No.

11:02:06 7 MS. PERALES: Thank you very much.

11:02:08 8 THE COURT: All right, Ms. Colmenero, you've  
11:02:10 9 been sitting there patiently.

11:02:12 10 MS. COLMENERO: Thank you, Your Honor. We  
11:02:16 11 just have a couple of quick points to make.

11:02:18 12 The Plaintiffs basically view there to be  
11:02:21 13 two distinct issues before the Court with respect to the  
11:02:23 14 Motion to Stay. And, one, we've already discussed at  
11:02:27 15 length, which is the DACA portion of the court's order.  
11:02:29 16 And the Plaintiffs believe that the Amended Meet and  
11:02:34 17 Confer that the Defendants and Plaintiffs have -- have  
11:02:37 18 filed with the Court addresses and narrows the issues  
11:02:41 19 before the Court such that the requirement for  
11:02:45 20 Defendants to produce the personally identifiable  
11:02:48 21 information for the expanded DACA recipients be  
11:02:51 22 postponed until 30 days after the Supreme Court rules  
11:02:55 23 and that this really addresses the Defendants concerns  
11:02:58 24 raised in their Motion to Stay.

11:03:00 25 And I'm not sure how Your Honor plans to



11:03:03 1 address that, but we think a supplemental order could --  
11:03:06 2 could address that issue and, in a way, moots the need  
11:03:11 3 to decide this aspect of the Defendant's Motion to Stay.

11:03:14 4 All that being said, the Plaintiffs still  
11:03:17 5 oppose Defendant's Motion to Stay because we don't  
11:03:21 6 believe that they've actually met the elements for a  
11:03:23 7 Motion to Stay.

11:03:25 8 And, in particular, with respect to the DACA  
11:03:28 9 portion of the court's order, Plaintiffs don't believe  
11:03:30 10 that Defendants have demonstrated that they will suffer  
11:03:33 11 an irreparable injury because, based on the Court's  
11:03:37 12 order, no one but the Court at this time, when that  
11:03:39 13 information is, in fact, provided to the Court, would  
11:03:41 14 have access to the personally identifiable information  
11:03:44 15 of those recipients.

11:03:46 16 So, to the extent that, you know, the Court  
11:03:52 17 and as a DACA -- I'm sorry, as Ms. Perales urges the  
11:03:55 18 Court to rule on the Motion to Stay, we don't think that  
11:03:57 19 it's necessary at this time and we also don't believe  
11:04:00 20 that they've met the elements for a stay.

11:04:01 21 The second portion of the court's order is  
11:04:04 22 the sanctions portion. And our position on this aspect  
11:04:08 23 of the court's order is really quite simple.

11:04:10 24 We are not -- the -- the Plaintiffs are not  
11:04:13 25 in a position to make an adversarial presentation since

11:04:18 1 we didn't have access to the privileged material that  
11:04:20 2 the Court considered when issuing its order.

11:04:24 3 And all of the information the Court  
11:04:25 4 considered is in the sealed documents or in the  
11:04:27 5 unredacted version of the brief, which we don't have  
11:04:30 6 access to.

11:04:30 7 So we believe that only the -- the Court  
11:04:32 8 really is in the best position to determine whether or  
11:04:36 9 not Defendants have demonstrated a likelihood of success  
11:04:40 10 on the merits for purposes of their Motion to Stay.

11:04:43 11 If Your Honor has no other questions, that  
11:04:48 12 is our presentation.

11:04:49 13 THE COURT: Okay. Thank you, ma'am.

11:04:54 14 MR. GILLIGAN: Your Honor, may I address one  
11:04:56 15 housekeeping issue?

11:04:57 16 THE COURT: You may.

11:04:58 17 MR. GILLIGAN: Thank you, Your Honor.

11:05:05 18 We certainly appreciate the Court giving us  
11:05:09 19 the additional time regarding the production of the PII  
11:05:12 20 and clarifying the scope of that obligation.

11:05:15 21 So there remains, as I say, one issue  
11:05:23 22 that -- that I need to raise with the Court. And I hope  
11:05:28 23 the Court will understand that I do so reluctantly and  
11:05:32 24 only out of necessity. And -- and it's -- it's an issue  
11:05:37 25 of -- of timing that remains, notwithstanding the

11:05:39 1 extension the Court has granted on the PII with respect  
11:05:42 2 to the deadlines that have been imposed on the Attorney  
11:05:45 3 General --

11:05:45 4 THE COURT: Let me -- let me assuage your  
11:05:49 5 worries here. Let me -- let me talk for a few minutes  
11:05:50 6 and then, if you still have an issue, I'll let you weigh  
11:05:53 7 back in.

11:05:54 8 MR. GILLIGAN: Okay. Thank you, Your Honor.

11:05:55 9 THE COURT: All right. I'm staying my  
11:06:05 10 ruling on all fronts until August 22nd. And we'll have  
11:06:14 11 a hearing on August 22nd at 11:00. That puts us well  
11:06:19 12 beyond any Supreme Court ruling.

11:06:22 13 Now, what this does is it means, regardless  
11:06:28 14 of how the Supreme Court rules, we're going to be back  
11:06:32 15 here, which was an issue my ruling was designed to  
11:06:35 16 prevent.

11:06:38 17 Now, Ms. Perales, that ought to take care of  
11:06:44 18 any problem you have, at least until August 22nd.

11:06:48 19 And, Ms. Colmenero, that's more than you  
11:06:50 20 agreed to, but you're stuck with it because I'm ordering  
11:06:54 21 that.

11:06:55 22 From the Government's standpoint, I mean, I  
11:07:02 23 wish there was a way we could just -- I could wave a  
11:07:08 24 magic wand, or maybe a magic gavel since I'm a Judge,  
11:07:10 25 and say, all right, let's have a do over. But there's

11:07:14 1 not.

11:07:18 2 I will give you until July 31st to suggest  
11:07:23 3 to me what you think I should do with regard to the  
11:07:28 4 misrepresentations made in court.

11:07:32 5 I mean, I gave you that opportunity before  
11:07:33 6 and you didn't take me up on it. The only thing you  
11:07:36 7 said is, if you're going to sanction one, sanction all.  
11:07:40 8 And, when I did that, you complained about it.

11:07:42 9 So, clearly, you filed that and you didn't  
11:07:44 10 mean it.

11:07:48 11 Now, there's -- there's no reason, and I'm  
11:07:53 12 not fussing at anybody here, but there's no reason,  
11:07:57 13 assuming the case gets sent back, or even assuming we  
11:08:00 14 just have to resolve this issue, that this litigation  
11:08:02 15 can't go forward on an even keel, professional basis,  
11:08:11 16 and -- and have it resolved the way it should be  
11:08:14 17 resolved.

11:08:18 18 Now, assuming the case gets affirmed, which  
11:08:26 19 I have no inside information, you guys from Washington  
11:08:29 20 may have more information that I do, Ms. Perales, we'll  
11:08:38 21 take up your pending motions on that same August 22nd  
11:08:41 22 deadline and the issue of whether to lift the stay.

11:08:46 23 Obviously, we'll have to lift the stay to  
11:08:49 24 take up her motions, but everything remains the same  
11:08:52 25 until that August 22nd deadline.

11:08:54 1 So the -- even though the stay, I think, we  
11:08:58 2 initially ordered was, what, 30 days after the Supreme  
11:09:01 3 Court ruled, I'm expanding that.

11:09:07 4 And -- and, Mr. Gilligan, I'm soliciting,  
11:09:16 5 like I thought I did before, but maybe I didn't  
11:09:20 6 communicate clearly, some input from y'all.

11:09:24 7 I mean, I would have never sent the entire  
11:09:29 8 DOJ to school again, except you asked me to.

11:09:38 9 Now, clearly, when you filed that brief,  
11:09:41 10 you -- you didn't really mean it. But -- but let's try  
11:09:49 11 to do something -- give me something to work with  
11:09:52 12 reasonably. And then whether it's evidence, or  
11:09:54 13 whatever, that you haven't provided me to date.

11:09:59 14 Now, Mr. Gilligan, do you need me to file a  
11:10:08 15 public order that names the individuals? Because I'll  
11:10:10 16 do it, if you -- if the Government, you're sitting  
11:10:12 17 there, confer with all the Government lawyers, and tell  
11:10:15 18 me?

11:10:16 19 MR. GILLIGAN: Your Honor, I believe I can  
11:10:18 20 say, without hesitation, that, no, we're not asking that  
11:10:22 21 that sealed order be put on public record.

11:10:24 22 THE COURT: All right. So I'm giving you as  
11:10:25 23 much notice as you may think you need. You know who the  
11:10:28 24 individuals are that -- that I think made the  
11:10:31 25 misrepresentations. Although, I'm sure there were other

11:10:35 1 people involved in writing the briefs and doing all that  
11:10:37 2 other kind of stuff.

11:10:40 3 But I would be -- I am solicitous of your  
11:10:45 4 input on that. I mean, I tried in August to get that  
11:10:48 5 input. And in June to get that input. And I didn't get  
11:10:52 6 it.

11:10:57 7 All right. Ms. Colmenero, you're the only  
11:11:03 8 one -- you're the big loser of the day. Is there  
11:11:05 9 anything you want to add?

11:11:06 10 MS. COLMENERO: No, Your Honor.

11:11:07 11 THE COURT: All right. Ms. Perales,  
11:11:08 12 anything you'd like to add?

11:11:10 13 MS. PERALES: No, Your Honor, except one  
11:11:12 14 really dumb question. When Your Honor said that it  
11:11:14 15 would take up my motions, were those the motions to  
11:11:17 16 proceed pseudonymously or another?

11:11:21 17 THE COURT: Yes. Yes.

11:11:22 18 MS. PERALES: Okay. Thank you for the  
11:11:23 19 clarification.

11:11:24 20 THE COURT: Well, do you have any other  
11:11:25 21 motions?

11:11:25 22 MS. PERALES: Not that I was aware of,  
11:11:27 23 Your Honor.

11:11:27 24 THE COURT: Okay. All right. Those are the  
11:11:27 25 only ones I knew.

11:11:29 1 All right. Mr. Gilligan, anything from the  
11:11:30 2 Government's standpoint?

11:11:31 3 MR. GILLIGAN: Nothing further at this time,  
11:11:33 4 Your Honor. Thank you.

11:11:33 5 THE COURT: All right. And let's -- let's  
11:11:38 6 be realistic about this. This is an important piece of  
11:11:41 7 litigation for everybody. So let's play by the rules,  
11:11:48 8 let's -- let's be forthright with each other. And I'm  
11:11:56 9 not accusing anybody that's here of -- of not doing  
11:11:59 10 that. And let's get beyond this. So we decided, if it  
11:12:04 11 comes back on the merits, the way it ought to be  
11:12:07 12 decided, and, if it doesn't come back, we'll resolve  
11:12:09 13 whatever sanctions, if any, should be issued on the  
11:12:14 14 22nd.

11:12:15 15 All right. Anything else? Okay. We'll  
11:12:18 16 stand adjourned. Thank y'all.

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## 1 REPORTER'S CERTIFICATE

2  
3 I certify that the foregoing is a correct transcript  
4 from the record of proceedings in the above-entitled  
5 matter.  
6

7  
8 /s/ Sheila E. Perales.  
SHEILA E. PERALES, CSR RPR CRR  
9 Exp. Date: Dec. 31, 2016  
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